

**REMARKS**

In the Office Action dated May 16, 2006, claims 1-31 and 38-68 have been examined. The Examiner has objected to the drawings as discussed below. In addition, the Examiner has rejected claims 1, 2 and 38-41 and objected to claims 3-31 and 42-68 as further discussed below. No new claims have been added. Applicants believe that the analysis and response presented herein shows that the claims are in condition for allowance. In view of the following remarks, reconsideration and allowance of the pending claims are respectfully requested.

**The Objections Under 37 C.F.R. § 1.83(a)**

The drawings were objected to under 37 CFR § 1.83(a) because the drawings allegedly failed to show "the sleeve at least partially surrounding said rod" as in claim 1. As an initial matter, Applicant notes that claim 1 was amended to state "sleeve at least partially surrounding said shaft" in the amendment dated April 11, 2006. It is believed that the Examiner intended to use the term "shaft" instead of the term "rod" as is consistent with Applicant's amendment.

Regarding the objection, Applicant notes that in the specification section titled "Brief Description of the Drawings," FIGS. 1, 2 and 3 are described as showing various views of an embodiment of the device disclosed in the application. With respect to the figures, and in particular FIGS. 1 and 2, sleeve 32 is shown substantially surrounding upper base member 24 such that sleeve 32 appears to drape upper base member 24. Furthermore, FIG. 3 shows sleeve 32 adjacent to shaft element 28, as depicted by the cross-hatching in the figure. Because sleeve 32 is shown substantially surrounding upper base member 24 in FIGS. 1 and 2, and because shaft element 28 is included in upper base member 24 in FIG. 3, a person of ordinary skill in this art would recognize that the sleeve must also "at least partially surround said shaft."

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The drawings were also objected to, again under 37 CRF 1.83(a), because the drawings allegedly failed to show that "sleeve includes an end portion adapted to contact at least one of the group consisting of a spinal rod, an orthopedic connector, and an orthopedic plate." Applicant notes that claim 40, and claim 1, are directed to a tool for reduction of a spinal support rod or other elongated orthopedic implant member. The purpose is described in part in paragraph 36 of the application.

[0036] The use of rod reducer 20 will now be described in the context of use with a substantially cylindrical bone screw 140 (FIG. 6, 9-10), such as a Schanz-type screw, and a rod for spinal correction. The illustrated embodiment of screw 140 has a substantially cylindrical upper part 142 and a threaded lower part 144. The upper part 142 may have an external or internal print to enable screw 140 to be threaded into a bone or otherwise manipulated. Screw 140 may have a print 146, which may be hexagonal and internal as shown or may be of other configuration (e.g. hexalobed or slotted internal print, or an external hexagonal or square print). The threads of threaded part 144 are intended to be securely fastened into a bone, and may be cancellous threads or another variety of threads useful in orthopedic surgery. Such screws may be used in or among one or more parts of the spine, including cervical, thoracic, lumbar and/or sacral portions. **Although the use of rod reducer 20 will be described in the above context, rod reducer 20 could be used with a variety of screws, hooks or other fixation implants, with an elongated implant member other than a rod, or in connection with orthopedic implants in other parts of the body than the spine. [emphasis added]**

Claim 40, therefore, is directed to a device that is adapted to be operated with a number of fixation or orthopedic medical implants such as spinal rods, orthopedic connectors, and orthopedic plates. The claimed device has a number of features, such as, but not limited to, the elements of claim 38. The implants mentioned in claim 40, however, are not features of the claimed device, but rather are workpieces operated on by the device. It is believed that the drawings need not show these medical implants of which the device is adapted to be used. Applicant believes, therefore, that the drawings are sufficient as disclosed because a person of

ordinary skill in the art would understand the features of the device as claimed, in conjunction with the description and drawings, as being directed to a mechanism useful for the reduction of a spinal support rod or other elongated orthopedic implant member.

*The Rejections Under 35 U.S.C. § 102*

Claims 1 and 2 were rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. 2,681,807 to Krafft. Regarding independent claim 1, claim 1 was rejected on the basis of a reference that is directed to a fusee holder, and in particular to a fusee holder that has a handle and is provided to facilitate the safe handling and economical and efficient use of fusees. The Office Action alleges that Krafft discloses features of a fusee holder that are present in the elements of claim 1. In particular, the Office Action alleges that element 26 in the Krafft reference, which is described as a central stem 26 but that in any event appears to be a plunger type mechanism as shown in Fig. 2, is identical to the claim element "base" in claim 1. The term "base" suggests a supporting part, and it is submitted that the central stem or plunger shown and described in Krafft is not a supporting part. Accordingly, the central stem 26 of Krafft cannot properly be referred to as a "base" as used in claim 1.

Further, the Office Action alleges that the claim element "sleeve" in claim 1 is identical to the slide 21 and button 23 of the Krafft reference. Applicant notes that the Office Action on page 3 states: "sleeve (21, 23) which partially surrounds the sleeve and is slidable with respect to the base and plate." Applicant believes that the Examiner meant to refer to "sleeve (21, 23), which partially surrounds the shaft, and is slidable with respect to the base and plate" as is recited in claim 1. Though a minor error, it is important to establish for the record that the Applicant believes the Office Action is alleging that a sleeve partially surrounds the shaft.

Assuming Applicant's belief is correct, it is noted that slide 21 and button 23 do not constitute or function as a sleeve or covering. Rather, slide 21 and button 23 are slidingly connected along the side of the handle of the fusee holder through a relatively flat surface and function simply as a way to move a latch which acts to restrain a fusee. Slide 21 and button 23 also do not "partially surround" the Krafft handle. Instead they lie along a small part of one side of the Krafft handle, whereas claim 1 recites a sleeve at least partially surrounding a shaft.

Additionally, claim 1 has been amended to recited that at least a portion of the base is external of the shaft's rearward end. In addition to the features discussed above, this feature also is not shown by the Krafft reference.

On at least these grounds, independent claim 1 is allowable over the Krafft reference, because Krafft does not show all elements of claim 1. Applicants respectfully request withdrawal of the rejection of independent claim 1 over Krafft.

Claim 2 depends from independent claim 1 and therefore includes all of the elements of claim 1. Claim 2 is allowable over the cited reference for at least the reasons cited above with respect to independent claim 1. Additionally, claim 2 is allowable on its own merit because Krafft does not disclose a ratchet mechanism, nor does Krafft disclose a sleeve.

In regard to the ratchet mechanism of claim 2, the Office Action alleges that element 17 in Krafft, which refers to a spring pressed rod or rods, is identical to the ratchet mechanism disclosed in the instant application. Applicant notes that the spring pressed rods used in Krafft provide a force that acts to restore the spring to its original position upon being displaced, as is typical in spring applications. This restoring force, furthermore, increases or decreases with progressive displacements. However, the ratchet mechanism as claimed in claim 2, and as

described in the instant application, and as a person of ordinary skill in the art would understand, refers to a mechanism that provides discrete positions upon being displaced and that, in any event, do not necessarily provide a restoring force upon a progressive displacement of the spring. At a minimum, the ratchet mechanism acts in a discreet fashion while the spring press rod acts in a continuous fashion. It will be understood that the ratchet mechanism can have a very fine number of ratchet steps, but that in any event it always acts as a discreet mechanism and not a continual mechanism. Indeed, a ratchet mechanism tends to counteract a restoring force exerted by a spring, holding a part in a given position until the mechanism is released. No mechanism is provided in Krafft to hold a part against the action of spring-rod 17 when pressure is released from button 23. A spring-pressed rod or rods, therefore, are not the same as a ratchet mechanism, and are not configured to act as a ratchet mechanism in Krafft.

Further to the above distinction of a ratchet mechanism, the Office Action alleges that element "A" as labeled in the Office Action, and which appears to be the same as rounded pin 43 in Krafft FIG. 2, acts as a pawl to create a ratcheting type mechanism. It is believed that nothing of the sort is disclosed in the reference. The plunger of Krafft is "resiliently pressed outwardly against the rods 33" and in this way, it is believed, further plunger movement is halted when flange 27 reaches rods 33. In this way, rounded pin 43 never has a chance to act as a pawl, leaving aside the issue that the pawl-like functioning of the rounded pin, as alleged in the Office Action, is never even disclosed in Krafft in the first place.

In regard to the sleeve, the Office Action alleges that element 24 of the Krafft reference, which refers to a lug found on the end of a slide that engages the upper edge of a latch ring, is identical to a sleeve of the instant application. As discussed above, items 23 and 24 of Krafft do

not constitute a sleeve as recited in the claims. Lug 24 is located on the end of a flat slide and engages the upper edge of a latch ring. Claim 2 is thus allowable over Krafft for at least the reasons recited above, and withdrawal of the rejection of claim 2 is respectfully requested.

Claims 38-41 were also rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by an alternative interpretation of Krafft. With regards to claims 38, the Office Action alleges that elements 21 and 23 of the Krafft reference, which refers to a slide and button, are identical to the shaft recited in claim 1. Once again, the flat slide and button of Krafft would not be considered a "shaft" by one of ordinary skill in this art, as discussed above. Further, claim 38 requires that the device be sized to allow insertion of an orthopedic implant. The Krafft reference fails to recite that it is sized to allow insertion of medical implants. Rather, Krafft is directed to, and is disclosed to be capable of receiving, fusees, i.e. large lighted torches or flares. On at least the grounds recited above, independent claim 38 is allowable over the Krafft reference, because Krafft does not show all elements of claim 38. Applicants respectfully request withdrawal of the rejection of claim 38 over Krafft.

Claim 39-41 depends from independent claim 38 and therefore includes all of the elements of claim 38. Claims 39-41 are allowable over the cited reference for at least the reasons cited above with respect to independent claim 38. Additionally, claim 41 is allowable on its own merit because Krafft does not disclose a ratchet mechanism, as previously discussed.

*Comment on Allowable Subject Matter*

Applicant notes that while the Office Action allowed claims 3-31 and 42-68 if rewritten in independent form, claims 3-31 and 42-68 depend from claims 1 and 38, respectively, and therefore include all of the limitations of independent claim 1 and 38, respectively. It is

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respectfully submitted that claims 3-31 and 42-68 are allowable over the objection for at least the reasons recited above with respect to claims 1 and 38, respectively. Accordingly, no amendments have been made to claims 3-31 and 42-68 at this time. Nonetheless, the right to amend those claims to independent or other appropriate form in a subsequent paper is reserved.

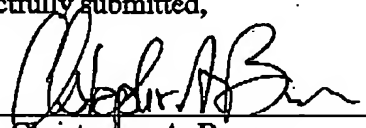
### CLOSING

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede any basis for rejections or objections in the Office Action. For those rejections based upon a combination of references, there is no admission that the cited combinations are legally permitted, properly motivated, or operable. Further, with regards to the various statements made in the Office Action concerning any prior art, the teachings of any prior art are to be interpreted under the law. Applicants make no admissions as to any prior art. The remarks herein are provided simply to overcome the rejections and objections made in the Office Action in an expedient fashion.

The undersigned welcomes a telephonic interview with the Examiner if the Examiner believes that such an interview would facilitate resolution of any outstanding issues.

Respectfully submitted,

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4002-3438.MTS.413700

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